

Message Text

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E.O. 11652: N/A

TAGS: ETRD, PFOR, BG

SUBJECT: ANTI-BOYCOTT LEGISLATION: RESTRICTIVE SHIPPING
CLAUSES

REF: (A) DACCA 6375 (NOTAL), (B) DACCA 6223 (NOTAL),
(C) STATE 282763, (D) STATE 250007
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1. COMMERCE DEPARTMENT OFFICE OF EXPORT ADMINISTRATION
OFFICE REGULATIONS (EXPORT ADMINISTRATION BULLETIN NO. 161
DATED OCTOBER 18, 76) PROVIDE THAT A RESTRICTION PRO-

HIBITING USE OF SHIPPING OR TRANSPORTATION FACILITIES THAT

ARE "BLACKLISTED" BY AN IMPORTING COUNTRY IS TO BE TREATED AS A BOYCOTT REQUEST UNDER THE MANDATORY REPORTING REQUIREMENTS OF THESE REGULATIONS. HOWEVER, SAME REGULATIONS MAKE CLEAR THAT A RESTRICTION SOLELY PRECLUDING USE OF A) SHIPPING/TRANSPORTATION FACILITIES OWNED, CONTROLLED, OPERATED OR CHARTERED BY A COUNTRY OR NATIONAL OF A COUNTRY NOT FRIENDLY TO THE IMPORTING COUNTRY OR B) A CARRIER THAT STOPS AT A PORT IN A COUNTRY NOT FRIENDLY TO THE IMPORTING COUNTRY PRIOR TO STOPPING AT THE PORT OF UNLADING IS NOT DEEMED A RESTRICTIVE PRACTICE WITHIN THE MEANING OF THE REGULATIONS. THESE LATTER RESTRICTIONS ARE REGARDED AS PRECAUTIONARY MEASURES TO AVOID RISK OF CONFISCATION AND THEREFORE NEED NOT BE REPORTED.

2. TREASURY GUIDANCE RELATED TO TAX REFORM ACT ANTI-BOYCOTT PROVISIONS (RIBICOFF ADMENDMENT) CONSIDERS CASE OF REQUIREMENT NOT TO SHIP GOODS ON SHIP OWNED, CONTROLLED, OPERATED, OR CHARTERED BY COUNTRY OR NATIONAL OF COUNTRY IN STATE OF HOSTILITY WITH IMPORTING COUNTRY OR ON SHIP WHICH DURING THE VOYAGE CALLS AT (PORT OF) HOSTILE COUNTRY EN ROUTE TO IMPORTING COUNTRY. TREASURY GUIDANCE CONCLUDES THAT AGREEING TO SUCH RESTRICTION WOULD NOT BE DEEMED PARTICIPATION IN OR COOPERATION WITH AN INTERNATIONAL BOYCOTT WITHIN MEANING OF TAX REFORM ACT. REQUIREMENT IS VIEWED, WHEN STATE OF HOSTILITY EXISTS, AS PRECAUTIONARY MEASURE TO AVOID RISK OF CONFISCATION RATHER THAN RESTRICTIVE BOYCOTT PRACTICE, (REF: Q. M-5 TREASURY RELEASE WS-1156 OF NOVEMBER 4, 1976). ALSO, MEASURES AGAINST RHODESIAN SHIPPING ARE EXEMPT UNDER THE RIBICOFF PROVISIONS.

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3. AS TO CALIFORNIA ANTI-BOYCOTT LAW, STATE ATTORNEY GENERAL OPINION DATED NOVEMBER 24, 1976 INDICATES THAT PROVISIONS OF THAT LAW WILL NOT APPLY TO PERFORMANCE BY A CALIFORNIA BANK UNDER LETTER OF CREDIT WHICH CONTAINS CONFISCATION OR WAR RISK CLAUSES SUCH AS THOSE CITED IN PARA 1 WHICH ARE DEEMED NOT TO BE RESTRICTIVE PRACTICES WITHIN MEANING OF USDOC REGULATIONS.

4. EMBASSY MAY PROVIDE ABOVE INFORMATION TO FIRMS MAKING INQUIRY, MAKING CLEAR THAT ONLY THE RESPONSIBLE FEDERAL AND CALIFORNIA AUTHORITIES CAN GIVE AUTHORITATIVE LEGAL READINGS OF THOSE LAWS. FIRMS MAY WISH TO DETERMINE BASIS FOR INCLUSION OF RESTRICTIVE LANGUAGE IN CONTRACTS PRIOR TO DRAWING CONCLUSIONS AS TO POSSIBLE APPLICABILITY OF ABOVE-MENTIONED LAWS/REGULATIONS TO FACTS OF THE PROPOSED TRANSACTIONS. SOME BUYERS HAVE USED LANGUAGE IN CONTRACTS, LETTERS OF CREDIT, SHIPPING AND OTHER BUSINESS DOCUMENTS

SPECIFYING PRECAUTIONARY PURPOSE FOR RESTRICTIONS ON USE OF SHIPS/PORTS OF UNFRIENDLY COUNTRIES. HOWEVER, IF CLAUSES FOR BOYCOTT RATHER THAN FOR PRECAUTIONARY PURPOSES, FIRMS SHOULD BE ENCOURAGED TO TRY TO AVOID THEM.

5. ANY LIGHT WHICH ADDRESSEE POSTS CAN THROW ON STATE OF HOST COUNTRY RELATIONS WITH COUNTRIES AGAINST WHICH SUCH SHIPPING CLAUSES DIRECTED BY GOVERNMENTS OR NATIONALS WILL BE WELCOMED.
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